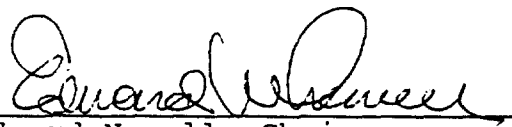


Findings of Fact and Conclusions of Law and Order #7C0467-5  
Atlantic Cellular Co., L.P./Vermont ETV/State of VT, FP&R  
Page 8

**COMMISSION ORDER:**

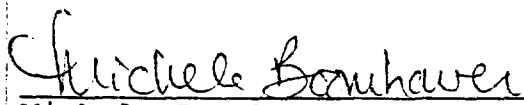
Based on the foregoing Findings of Fact and Conclusions of Law  
Land Use Permit 7C0467-5 is hereby issued.

Dated at St. Johnsbury, Vermont, this 19th day of June, 1995.

By:   
Edward Newell, Chairperson  
District #7 Environmental Commission  
Environmental Board

Others participating in this decision:

Jill Broderick

  
Michele Boomhower  
District #7 Assistant Coordinator  
Environmental Board

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## ENVIRONMENTAL BOARD RULES

### ARTICLE I. GENERAL PROVISIONS

#### Rule 1. Description of the Organization

(A) The environmental board and district commissions were established by Act 250 of the acts of the adjourned session of the 1969 General Assembly of the state of Vermont (Chapter 151 of Title 10).

(B) For administrative purposes the state is divided into nine districts. Each district has a three member commission, with alternates, appointed by the governor, which serves as a quasi-judicial body with the authority to determine whether and under what conditions a land use permit may be issued for development or subdivision of land subject to the jurisdiction of Act 250. Administrative support for the commissions is provided by a district coordinator and assistants, as required. The location and telephone number of each administrative office is listed in the telephone directory under "Vermont, State of: ENVIRONMENTAL BOARD, District Environmental Commissions." (Amended, effective March 11, 1982 and May 4, 1990.)

(C) The environmental board consists of nine members appointed by the governor. Support for the board consists of the board chair, legal and administrative staff, as required, with offices in Montpelier, Vermont. The board has the following functions: (Amended, effective May 4, 1990 and January 2, 1996.)

## Rule 2.

(1) To serve as a quasi-judicial appellate body to hear appeals from commission decisions, with the authority to determine whether and under what conditions a land use permit may be issued for a development or subdivision of land subject to the jurisdiction of Act 250;

(2) To prepare and adopt rules to interpret and carry out the provisions of Act 250;

(3) To act upon petitions for declaratory rulings concerning the applicabilities of any statutory provision, or any rule or order of the board; (Added, effective March 11, 1982.)

(4) To provide for the fair and efficient management of the permit process through the chair of the board and through the issuance of guidelines for program administration; (Added, effective March 11, 1982 amended, effective January 2, 1996.)

(5) To enter into inter-agency agreements for the administration and enforcement of the permit process; (Added, effective March 11, 1982.)

(6) To initiate administrative and legal proceedings to prevent, restrain, correct or abate any violation of Act 250, these rules, or any permit lawfully issued thereunder. (Added, effective March 11, 1982 and amended, effective January 2, 1996.)

## Rule 2. Definitions

(A) A project is a "development" if it satisfies any of the following definitions:

(1) Any construction of improvements, for any purpose, above the elevation of 2,500 feet;

Rule 2.

(2) The construction of improvements for any commercial or industrial purpose, including commercial dwellings, which is located on a tract or tracts of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres unless the municipality in which the proposed project is located has elected by ordinance, adopted under chapter 59 of Title 24, to have jurisdiction apply to development on more than one acre of land. This jurisdiction does not apply to construction for farming, logging, or forestry purposes below the elevation of 2,500 feet. In determining the amount of land, the area of the entire tract or tracts of involved land owned or controlled by a person will be used; (Amended, effective March 11, 1982 and January 2, 1996.)

(3) The construction of a housing project or projects such as cooperatives, apartments, condominiums, detached residences, construction or creation of mobile home parks or trailer parks, or commercial dwellings with ten or more units constructed or maintained on a tract or tracts of land owned or controlled by a person within a radius of five miles of any point on any involved land within a continuous period of five years;

(4) The construction of improvements for state, county or municipal purposes, on a tract or tracts of land involving more than ten acres of land. The computation of involved land shall include the land which is incidental to the use such as lawns,

Rule 2.

parking lots, driveways, leach fields, and accessory buildings. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that a project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction;

(Amended, effective March 11, 1982.)

(5) Any construction of improvements which will be a substantial change of a pre-existing development, and any material change to an existing development over which the board or a district commission has jurisdiction;

(6) The construction of improvements for a road or roads, incidental to the sale or lease of land, to provide access to or within a tract of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres. For the purpose of determining jurisdiction, any parcel of land which will be provided access by the road is land involved in the construction of the road. This jurisdiction shall not apply unless the road is to provide access to more than five parcels or is to be more than 800 feet in length. For the purpose of determining the length of a road, the length of all other roads within the tract of land constructed within any continuous period of ten years commencing after the effective date of this rule shall be included; (Amended, effective March 11, 1982.)



Rule 2.

(7) Any exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material;

(8) The drilling of a well for the testing of an oil or natural gas reservoir, or for the extraction of oil or natural gas;

(9) Any low-level radioactive waste disposal facility proposed for construction under 10 V.S.A. chapter 161 regardless of the acreage involved; and,

(10) Any construction of improvements which is likely to generate low-level radioactive waste, regardless of the acreage involved. (Subsections (9) and (10) added, effective January 2, 1996.) **(See 10 V.S.A. Section 6001b.)**

(B) "Subdivision" means a person's partitioning or dividing a tract or tracts of land into ten or more lots including all other lots which that person has created through subdivision within an environmental district, or within a five mile radius of any point of subdivided land if any lots have been created in any adjoining district, within any continuous period of five years after April 4, 1970. "Subdivision" shall also mean any material change to an existing subdivision over which a district commission or the board has jurisdiction and any substantial change to a pre-existing subdivision. A subdivision shall be deemed to have been created with the first of any of the following events: (Amended, effective May 4, 1990.)

Rule 2.

(1) The sale or offer to sell or lease the first lot within a tract or tracts of land with an intention to sell, offer for sale, or lease 10 or more lots. A person's intention to create a subdivision may be inferred from the existence of a plot plan, the person's statements to financial agents or potential purchasers, or other similar evidence;

(2) The filing of a plot plan on town records;

(3) The sale or offer to sell or lease the tenth lot of a tract or tracts of land, owned or controlled by a person, when the lot is within an environmental district or within a five mile radius of any point on any other lot created by that person within any continuous period of five years after April 4, 1970. (Amended, effective May 4, 1990.)

(C) "Commencement of construction" means the construction of the first improvement on the land or to any structure or facility located on the land including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in any way incidental to altering the land according to a plan or intention to improve or to divide land by sale, lease, partition, or otherwise transfer an interest in the land.

(D) "Construction of improvements" means any physical action on a project site which initiates development for any purpose enumerated in Rule 2(A). Activity which is principally for preparation of plans and specifications that may be required and necessary for making application for a permit, such as test wells and pits (not including exploratory oil and gas wells),

Rule 2.

percolation tests, and line-of-sight clearing for surveys may be undertaken without a permit, provided that no permanent improvements to the land will be constructed and no substantial impact on any of the 10 criteria will result. A district commission or the board may approve more extensive exploratory work prior to issuance of a permit after complying with the notice and hearing requirements of Rule 51 herein for minor applications.

(E) "State, county or municipal purposes" means projects which are undertaken by or for the state, county or municipality and which are to be used by the state, county, municipality, or members of the general public.

(F) "Involved land" includes:

(1) The entire tract or tracts of land upon which the construction of improvements for commercial or industrial purposes occurs; and

(2) Those portions of any tract or tracts of land within a radius of five miles owned or controlled by the same person or persons, which is incident to the use of the project; and

(3) Those portions of any tract or tracts of land within a radius of five miles owned or controlled by the same person or persons, which bear some relationship to the land actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship.

Rule 2.

In the event that a project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction. (Amended, effective March 11, 1982)

(G) "Substantial change" means any change in a development or subdivision which may result in significant impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10).

(H) "Person" is defined at 10 V.S.A. §6001(14)(A) and (B). (Amended, effective January 2, 1996.)

(I) "Dwelling" means any building or structure or part thereof, including but not limited to hotels, rooming houses, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation.

(J) "Lot" means any undivided interest in land, whether freehold or leasehold, including but not limited to interests created by trusts, partnerships, corporations, covenancies and contracts.

(K) "Party" means any person designated as a party under the Act or Rule 14 of these rules. (Amended, effective January 2, 1996.)

(L) "Commercial purpose" means the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object having value. (Added, effective July 15, 1974.)

Rule 2.

(M) "Commercial Dwelling" means any building or structure or part thereof, including but not limited to hotels, motels, rooming houses, nursing homes, dormitories and other places for the accommodation of people, that is intended to be used and occupied for human habitation on a temporary or intermittent basis, in exchange for payment of a fee, contribution, donation or other object having value. The term does not include conventional residences, such as single family homes, duplexes, apartments, condominiums or vacation homes, occupied on a permanent or seasonal basis. (Added, effective March 11, 1982.)

(N) "Pre-existing subdivision" shall mean a subdivision exempt under the regulations of the department of health in effect on January 1, 1970 or any subdivision which had a permit issued prior to June 1, 1970 under the board of health regulations, or had pending a bona fide application for a permit under the regulations of the board of health on June 1, 1970, with respect to plans on file as of June 1, 1970 provided such permit was granted prior to August 1, 1970.

(O) "Pre-existing development" shall mean any development in existence on June 1, 1970 and any development which was commenced before June 1, 1970 and completed by March 1, 1971.

(P) "Material change" means any alteration to a project which has a significant impact on any finding, conclusion, term or condition of the project's permit and which affects one or more values sought to be protected by the Act.

Rule 3.

(Q) "Solid waste management district" means a solid waste management district formed pursuant to § 2202a and chapter 121 of Title 24, or by charter adopted by the general assembly.

(R) "Adjoining property owner" means a person who owns land in fee simple, if that land:

(1) shares a boundary with a tract of land where a proposed or actual development or subdivision is located: or

(2) is adjacent to a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or a public highway. (§§ (Q) and (R) Added, effective January 2, 1996.)

**Rule 3. Rulemaking, Jurisdictional Opinions and Declaratory Rulings**

(A) Authority for rules and declaratory rulings. The authority to adopt rules and to act upon petitions for declaratory rulings is vested solely in the board.

(B) Petitions for rulemaking. Petitions for the adoption, amendment or repeal of any rule will be entertained by the board. Petitions will be considered and disposed of pursuant to the procedures specified in the Administrative Procedure Act, 3 V.S.A. Chapter 25.

(C) Jurisdictional opinions. Any person seeking a ruling as to the applicability of 10 V.S.A. Chapter 151 (Act 250), these rules or order of the board may request a jurisdictional opinion from a district coordinator in the appropriate environmental district. In addition, district coordinators may issue

### Rule 3.

jurisdictional opinions when, in their judgment, the applicability of Act 250, these rules or an order of the board needs to be determined.

(1) If the person who requested the opinion wants it to be a final determination, the district coordinator, at the expense of the requestor, shall serve the opinion on all persons identified in writing by the requestor, or known to the coordinator, as either qualifying as parties under Rule 14(A) or who may be affected by the outcome of the opinion.

(2) Persons who qualify as parties under Rule 14(A) or who may be affected by the outcome of the opinion may request reconsideration from the district coordinator within 30 days of the mailing of the opinion. The filing of a timely request for reconsideration shall stop the period for appeal. A new full period for appeal shall begin on the date of a refusal to reconsider or, if reconsideration is accepted, on the date the reconsidered opinion is mailed.

(3) A jurisdictional opinion of a district coordinator may be appealed to the environmental board by any person who qualifies as a party under Rule 14(A) or who may be affected by the outcome of the opinion. Such appeals shall be by means of a petition for a declaratory ruling under section (D) of this rule. An appeal from a jurisdictional opinion issued by a district coordinator must be filed with the board within 30 days of mailing of the jurisdictional opinion to the person appealing. Failure to appeal within the prescribed period shall render the

### Rule 3.

opinion final for all persons to whom it has been mailed. A district coordinator may reconsider, or accept a request for reconsideration of, a jurisdictional opinion at any time upon an adequate showing of a failure to disclose material facts or fraud

(D) Declaratory rulings. Petitions for declaratory rulings as to the applicability of Act 250, these rules, or an order of the board shall be filed with the board and shall be accompanied by a \$25.00 filing fee, an original and ten copies of the petition and the jurisdictional opinion appealed from, and a certificate showing that the following persons have been served: all parties under Rule 14(A) and any other persons on whom the district coordinator served the opinion. Petitions for declaratory ruling will be considered and disposed of promptly. A petition may be treated as a petition for adoption of rules or as a contested case as may be proper under the circumstances. The chair may issue preliminary rulings subject to timely objection of any party in interest, in which event the matter shall be considered by the board.

(1) Notice of declaratory rulings. The board shall provide due notice of the filing of a petition for declaratory ruling to each party under Rule 14(A) and to any other persons on whom the district coordinator served the relevant jurisdictional opinion. At the cost of the petitioner, the board will publish a notice of the hearing or initial prehearing conference in a local newspaper generally circulating in the area in which the land is located.



#### Rule 4.

(2) Reconsideration of declaratory rulings. The board may reconsider a declaratory ruling. Any request for reconsideration must be received within 30 days from the date of the declaratory ruling in accordance with Rule 31(A) of these rules, unless the board finds an adequate showing of failure to disclose material facts or fraud. (§§ 3(A), (B), (C) and (D) amended, effective January 2, 1996.) **See 10 V.S.A. § 6007(c).**

#### Rule 4. Subpoenas

The chair of the board, the chair of a district commission, or a licensed attorney representing a party before the board or a district commission may compel, by subpoena, the attendance and testimony of witnesses and the production of books and records. A party not represented by a licensed attorney may submit a written request for a subpoena stating the reasons therefor and representing that reasonable efforts have been made to obtain voluntary compliance with its requests. Costs of service, fees, and compensation shall be paid in advance by the party requesting the subpoena. The board or a district commission may issue subpoenas for the attendance of witnesses or the production of documents on its own motion. In all other respects, the provisions of Rule 45, §§ (a) and (b), of the Vermont Rules of Civil Procedure and 3 V.S.A., §§ 809a and 809b, shall apply and are incorporated herein. (Amended, effective March 11, 1982; May 4, 1990; and January 2, 1996.)

Rule 6 and 10.

**Rule 6. Computation of Time**

In computing any period of time prescribed or allowed by Act 250, these rules, or an order of the board or district commissions, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless this day is a Saturday, Sunday, State legal holiday, or the day after Thanksgiving, in which event the period runs until the end of the next day which is not a Saturday, Sunday, State legal holiday, or the day after Thanksgiving. (Added, effective May 4, 1990.)

Whenever a person has the right or is required to file a document within a prescribed period after the service of paper on the person and the paper is served on the person by mail, the period shall begin to run three days after the date on which the paper was postmarked, unless the board or district commission served the paper or set a specific date by which the person must file. (Amended, effective January 2, 1996.)

**ARTICLE II. PROCEDURE BEFORE THE DISTRICT  
COMMISSIONS AND ENVIRONMENTAL BOARD**

**Rule 10. Permit Applications**

(A) An application shall be signed by the applicant and any co-applicant, or an officer or duly-appointed agent thereof. The record owner(s) of the tract(s) of involved land shall be the applicant(s) or co-applicant(s) unless good cause is shown to support waiver of this requirement. When the applicant is a

Rule 10.

municipality or a solid waste management district empowered to condemn the involved land or an interest in it, then the application need only be signed by that party. The application shall list the name or names of all persons who have a substantial property interest, such as through title, lease, purchase or lease option, right-of-way or easement, in the tract or tracts of involved land by reason of ownership or control and shall describe the extent of their interests. The district commission or board may, upon its own motion or upon the motion of a party, find that the property interest of any such person is of such significance that the application cannot be accepted or the review cannot be completed without their participation as co-applicants. (Amended, effective May 4, 1990 and January 2, 1996.)

(B) The board shall from time to time issue guidelines for the use of commissions and applicants in determining the information and documentation that is necessary or desirable for thorough review and evaluation of projects under applicable criteria. The board or a commission may require such additional information or supplementary information as the board or commission deems necessary to fairly and properly review the proposal. If the applicant submits or intends to submit permits or certifications as evidence under Rule 19, the applicant shall, upon request of the board or a commission or upon challenge of a party under Rule 19, submit copies of all materials relevant to such permit or certification. (Amended, effective March 11, 1982.)

Rule 10.

(C) In order to avoid unnecessary or unreasonable costs for applicants and other parties, the board or a district commission may authorize the sequential filing of information for review under the 10 criteria. (Amended, effective March 11, 1982.)

(D) An application that is incomplete in substantial respects shall not be accepted for filing by the district coordinator, and therefore shall not initiate the time and notice requirements of the Act and these rules. A coordinator's decision that an application is substantially incomplete may be appealed in accordance with Rules 3(C)(3) and 3(D) of these rules. A coordinator's decision that an application is complete is for the purpose of initiating the time and notice requirements and cannot be appealed. (Amended, effective May 4, 1990.)

(E) The applicant shall file an original and five copies of the application, and the fee prescribed by Rule 11 with the appropriate district commission. The applicant shall certify by affidavit in the application that the applicant has forwarded notice and copies of the application to the municipality, the municipal and regional planning commissions wherein the land is located and any adjacent Vermont municipality, municipal or regional planning commission if the land is located on a boundary; and the owner of the land if the applicant is not the owner; and the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to § 6602(10) of 10 V.S.A. and that the applicant has either posted or caused to be posted a copy of

Rule 10.

the notice of application in the town clerk's office of the town or towns wherein the land lies. (Amended, effective March 11, 1982, January 2, 1996 and May 22, 1996.) **See 10 VSA § 6084 (a).**

(F) The applicant shall file with the application a list of adjoining property owners to the tract or tracts of land proposed to be developed or subdivided unless this requirement is waived by the district coordinator, in consultation with the chair of the district commission. Provision of personal notice of the hearing or public comment period to adjoining property owners and persons not listed in section (E) of this Rule by the district commission shall be solely within the discretion and responsibility of the chair of the district commission. The chair of the district commission may authorize a waiver of personal notice of the hearing or public comment period to adjoining property owners by the district commission. Any waiver must be based on a determination that the adjoining property owners subject to the waiver reasonably could not be affected by the proposed development or subdivision and that service to each and every property owner by the district commission would constitute a significant administrative burden without corresponding public benefit. However, personal notice of the hearing or public comment period shall be provided by the district commission to any adjoining property owner who has requested such notice. (Added, effective March 11, 1982; amended January 2, 1996 and May 22, 1996.) **See 10 VSA § 6084 (b).**

(G) The applicant shall be responsible for the cost of

Rule 10.

publication of notice of the application in a local newspaper generally circulated in the area where the land is located. The district commission shall be responsible for the publication of this notice, and publication shall occur not more than seven days after the district commission has received the completed application. The notice shall contain the name of the applicant and his or her address; the location of the proposed development or subdivision, and if a subdivision, the number of lots proposed; the location of the district commission where the application was filed; and the date of filing. The project location specified in the notice shall be sufficiently precise so that a person generally familiar with the area can approximately locate the tract or tracts of land on an official town highway map. The district commission shall provide notice of the application and the date of hearing or public comment deadline to all those listed in section (E) of this rule and 10 V.S.A. § 6084(b), except that provision of personal notice to adjoining property owners by the district commission may be waived by the chair of the district commission as specified in section (F). (Amended, effective March 11, 1982 and January 2, 1996.)

## Rule 11.

(H) Applications for amendments to permits shall be on forms provided by the board. Procedural requirements for notice and hearings regarding permit amendments are set forth in Rule 34 of these rules. (Amended, effective March 11, 1982 and January 2, 1996.)

### Rule 11. Fees

(A) All applicants shall be directly responsible for the costs involved in the publication of notice in a newspaper of general circulation in the area of the proposed development or subdivision and the costs incurred in recording any permit or permit amendment in the land records as provided by Rule 33; and, shall be subject to a fee for the purpose of compensating the State of Vermont for the direct and indirect costs incurred with respect to the administration of the Act 250 program. (Amended, July 16, 1991; January 3, 1997.)

(1) For projects involving construction, \$4.25 for each \$1,000 of the first \$15,000,000 of construction costs, and \$2.00 for each \$1,000 of construction costs above \$15,000,000;

(Amended, effective July 16, 1991.) and

(2) For projects involving the creation of lots, \$50.00 for each lot; (Amended, effective July 16, 1991.) and

(3) For projects involving exploration for or removal of oil, gas and fissionable source materials, a fee as determined under subparagraph (A)(1) or \$1000 for each day of commission and board hearings required for such projects, whichever is the greater; (Amended, effective July 16, 1991.) and

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(4) For projects involving the extraction of earth resources including but not limited to sand, gravel, peat, topsoil, crushed stone or quarried material, a fee as determined under subparagraph (A) (1) or a fee equivalent to the rate of \$.10 per cubic yard of maximum estimated annual extraction, whichever is greater; (Added, effective July 16, 1991.) and

(5) For projects involving the review of a master plan as provided in Rule 21, a fee equivalent to \$.10 per \$1000 of total estimated construction cost in current dollars in addition to the fee established in subparagraph (A) (1) for any portion of the project seeking construction approval. (Added, effective July 16, 1991.)

(6) In no event shall a permit application fee exceed \$135,000. (Amended, January 3, 1997.)

Notwithstanding the above, there shall be a minimum fee of \$100 for original applications and \$25 for amendment applications, in addition to publication and recording costs. These costs shall be in addition to any fee established by statute, unless otherwise expressly stated.

(B) Fees shall not be required for projects undertaken by municipal agencies or by State governmental agencies, except for publication and recording costs. (Amended, effective May 4, 1990.)

(C) All persons filing an appeal or cross appeal from a district environmental commission decision shall pay a fee of \$50, plus publication costs. (Amended, effective May 4, 1990.)



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(D) A written request for an application fee refund must be submitted to the district commission to which the fee was paid within 90 days of the withdrawal of the application. (Amended, January 3, 1997.)

(1) In the event that an application is withdrawn prior to the convening of a hearing, the district commission shall, upon request of the applicant, refund 50 percent of the fee paid between \$100 and \$5,000, and all of that portion of the fee paid in the excess of \$5,000 except that the district commission may decrease the amount of refund if the direct and indirect costs incurred by the State of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission. (Amended, January 3, 1997.)

(2) In the event that an application is withdrawn after a hearing, the district commission shall, upon request of the applicant, refund 25 percent of the fee paid between \$100 and \$10,000, and all of that portion of the fee paid in excess of \$10,000 except that the district commission may decrease the amount of refund if the direct and indirect costs incurred by the State of Vermont with respect to the administration of the Act 250 program clearly and unreasonably exceed the fee that would otherwise be retained by the district commission. (Amended, January 3, 1997.)

(3) The district commission shall, upon request of the applicant, increase the amount of refund if the application of